

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Squad #15	CCRB Case #: 201504483	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2015 9:30 PM	Location of Incident: In front of 1701 Putnam Avenue	Precinct: 104	18 Mo. SOL 12/2/2016	EO SOL 12/2/2016	
Date/Time CV Reported Tue, 06/02/2015 9:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/02/2015 9:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Dick	15402	952682	104 PCT
2. POM Michael Cappellano	18910	950156	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Dick	Abuse: PO James Dick stopped § 87(2)(b)	
B.POM James Dick	Abuse: PO James Dick searched the car in which § 87(2)(b) was an occupant.	
C.POM James Dick	Abuse: PO James Dick refused to provide his name and shield number to § 87(2)(b)	
D.POM Michael Cappellano	Abuse: PO Michael Cappellano refused to provide his name and shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On June 2, 2015 at 9:58 p.m., § 87(2)(b) filed this complaint with the CCRB via the online website.

On June 2, 2015 at approximately 9:30 p.m., § 87(2)(b) was allegedly stopped by PO James Dick and PO Michael Cappellano of the 104<sup>th</sup> Precinct in front of 1701 Putnam Avenue in Queens (**Allegation A**). PO Dick allegedly searched § 87(2)(b)'s vehicle after smelling an odor of marijuana emanating from it (**Allegation B**). § 87(2)(b) also alleged that both officers refused to provide him with their names and shield numbers before driving away from the scene (**Allegations C and D**). § 87(2)(b) was not arrested or issued a summons.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) originally accepted mediation in a phone call on June 3, 2015. However, § 87(2)(b) rejected mediation after being pulled over again by PO Dick § 87(2)(b).
- A FOIL request returned by the Office of the Comptroller on August 19, 2015, indicates that § 87(2)(b) has not filed a notice of claim in regards to this case (encl. 04 Board Review).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has previously filed the following complaints with the CCRB:
  - § 87(2)(b)
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- This case, along with § 87(2)(b), are the first complaints filed against PO Dick in his one-year tenure with the NYPD.
- PO Cappellano has had two substantiated allegations filed against him in his four-year tenure with the NYPD. In CCRB 201404953, allegations of question and vehicle search were substantiated against him. § 87(4-b), § 87(2)(g). The Board recommended Command Discipline in regards to these substantiated allegations. The NYPD disposition for this case is still pending.

### Potential Issues

- On June 9, 2015, a phone call was placed to Fresh Taco and an employee confirmed that there was no pertinent video camera footage that would depict the incident, as the camera only faces the cashier area. Furthermore, this employee stated she had no recollection of any police incident on the date and time.

### Finding and Recommendations

#### Officer Identification

In his initial complaint, § 87(2)(b) provided the subject officers' vehicle license plate as § 87(2)(e); a Fleet Services Division search indicated this corresponded to RMP #1699, assigned to the 104<sup>th</sup> Precinct.

Two weeks later on June 19, 2015, § 87(2)(b) was stopped again by PO Dick § 87(2)(b). During this incident, § 87(2)(b) asked for PO Dick's name and shield number, and so identified PO Dick as the subject officer in this case. PO Dick's memo book indicates that he was assigned as operator of RMP #1699 on this incident date. As such, it is confirmed that PO Dick indeed is the subject officer. Memo books and roll call indicate that PO Dick's partner on that date was PO Cappellano.

§ 87(2)(b) described the subject officers in this case as white males in their thirties. The description provided is generally consistent with that of PO Dick and PO Cappellano. They are both white males and they are approximately 30 years old. § 87(2)(g)

#### Recommendations

##### Allegation A—Abuse of Authority: PO James Dick stopped § 87(2)(b)

In his statement (encl. 01 Board Review), § 87(2)(b) alleged that he was originally stopped for allegedly parking in front of a fire hydrant. When PO Dick approached, he allegedly told § 87(2)(b) that he was "idling in front of the hydrant." § 87(2)(b) stated he was parked immediately in front of the fire hydrant, but could not recall how many feet, or if he was inside or outside the legal 15 feet limit.

PO Dick and PO Cappellano did not have any independent recollection of this incident nor any documentation thereof in their memo books (encl. 02 and 03 Board Review respectively).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B—Abuse of Authority: PO James Dick searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C—Abuse of Authority: PO James Dick refused to provide his name and shield to § 87(2)(b)**

**Allegation D—Abuse of Authority: PO Michael Cappellano refused to provide his name and shield to § 87(2)(b)**

§ 87(2)(b) alleged that after informing him that he had been parked near a fire hydrant, PO Dick instructed him to exit the vehicle because he smelled marijuana. § 87(2)(b) told PO Dick to search his vehicle, but to be aware that he and PO Cappellano will need to provide their names and shield numbers once the search is completed. However, upon the conclusion of the search, both officers left the scene without providing the requested information. Despite being presented with a synopsis of this incident, neither PO Dick nor PO Cappellano could recall this incident.

While PO Dick and PO Cappellano could not recall this incident and did not prepare memo book entries in regards, the investigation was able to identify that they were the subject officers using various leads. The physical descriptions of them provided by § 87(2)(b) closely corresponded to their pedigree information listed in their CCRB Interview Report Sheet. Additionally, they were assigned to the unmarked police vehicle which has the New York license plate provided by § 87(2)(b) of the vehicle the subject officers were driving at the time of the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(2)(b)

§ 87(4-b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator: _____	_____	_____
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date